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From:

Sent: Wednesday, November 23, 2011 11:45:32 AM

To:

Cc:

Subject: 528 question

This is in response to your email request for review sent . In that email you requested our opinion on whether a certain home owners association (HOA) that elected to be taxed under section 528 of the Internal Revenue Code by filing the required 1120-H return for the year may now revoke that election. In our view, it is permissible for the HOA to revoke the election but only with the consent of the Commissioner and not by filing an 1120X as the taxpayer did in the instant case before obtaining such consent.

Section 1.528-8 of the Income tax regulations provides that an organization wishing to be treated as a homeowners association under section 528 for the taxable year must elect to be so treated and that such election shall be made by filing a properly completed Form 1120-H. Further, a separate election must be made for each taxable year.

Section 1.528-8(f)(1) of the regulations provides that an election to be treated as an organization described in section 528 is binding on the organization for the taxable year and may not be revoked without consent of the Commissioner.

Rev. Rul. 83-74, 1983-1 C.B. 112, provides that permission will be granted to a homeowners association to revoke an election made under section 528 of the Code because of inadequate tax advice provided to it by its professional tax advisor.

In the instant case, the HOA has made a similar claim of inadequate tax advice by its former tax advisor CPA firm.

We agree with you that examination is incorrect in its conclusion that HOA's must request a revocation within 12 months of the date of the original return including extensions under Rev. Proc. 92-85, 1992-2 C.B. 490, as that superseded and obsoleted revenue procedure concerned, in part, an automatic 12-month extension for certain elections whose deadlines are prescribed by regulation including the election to be treated as a section 528 HOA and not the revocation of a previously made election.

Accordingly, it is appropriate for the HOA herein to request the consent of the Commissioner to revoke the election. The regulations do not address the proper procedure for obtaining that consent, but as you note HOA's have previously requested private letter rulings granting them relief under section 9100. Unless there is another procedure that has been established by the IRS of which we are not aware, then it would be appropriate for this HOA to submit a request for a private letter ruling under Rev. Proc. 2011-1.